



Department of Education and Cultural Affairs

August 31, 1999

SUBJECT: Limited Disclosure of Children's Free and Reduced Price Meal
Or Free Milk Eligibility Information
NSLP - 25
CACFP - 24
SFSP - 8A
SMP - 1

TO: Authorized Representatives
Child Nutrition Programs

FR: Sandra M. Kangas, Program Director
Child and Adult Nutrition Services

The eligibility status of children (free/reduced price/paid) has long been closely guarded confidential information. While those responsible for the lists were not required to memorize the list and eat it to prevent anyone else from seeing it, it certainly had very strict limits about sharing the information. It is recommended that the agencies review this procedure with their legal counsel. Review the memo carefully and, if you have any questions about whether or not the group requesting the information is eligible to receive it either with or without a waiver of confidentiality from the parents, contact Child and Adult Nutrition Services (CANS) at 773-3413.

This lengthy memo is almost word for word as it came from USDA. In summary,

- ▶ it allows agencies to disclose participants' names and eligibility status, without parental consent, to other agency personnel responsible for administration of federal education programs, State health or State education programs with limitations, and other means-tested nutrition programs (part I [A]);
- ▶ clarifies the release of all eligibility information to reviewers, auditors, and investigators as well as those responsible for administration of another child nutrition program (part I [B]);
- ▶ recommends notification of households of potential disclosures (part I[C] and parent letter accompanying 1999-2000 application for free and reduced price meals);
- ▶ specifies which types of disclosures require consent (part II);
- ▶ defines requirements for consent statements when waivers of confidentiality are utilized (part III);
- ▶ defines requirements for disclosure of social security number (part IV);

- ▶ outlines requirements for agreements for disclosure of information (part V); and
- ▶ specifies penalties for improper disclosures (part VI).

The Healthy Meals for Healthy Americans Act of 1994, P.L. 103-448, amended Section 9(b)(2)(C) of the National School Lunch Act (NSLA) (42 U.S.C. 1751(b)(2)(C)) to allow, without consent, limited disclosure of information about free and reduced price meal or free milk eligibility. The disclosure limitations apply to all the Child Nutrition Programs. The statute also specifies a fine of not more than \$1,000 or imprisonment of not more than 1 year, or both, for unauthorized disclosures of free and reduced price meal or free milk eligibility information.

Prior to issuance of a final rule, USDA has authorized determining agencies to disclose free and reduced price meal or free milk eligibility information to the extent authorized in the statute. For purposes of this memorandum a “determining agency” means the State agency, school food authority, school (including a private school), child care institution (sponsoring organization, child care center, outside-school-hours care center), or Summer Food Service Program sponsor that makes the free and reduced price meal or free milk eligibility determination.

Disclosure of eligibility information about participants beyond that authorized by the statute is permitted only with consent. The entity receiving the information from the determining agency, hereafter termed the “receiving entity” may use the information only for the purpose authorized and may not share the information further. In no case are determining agencies *required* to disclose eligibility information. Providing aggregate information that does not identify individuals continues to be permitted without consent. An example of aggregate information is the enrollment of the school/attendance center and how many children are eligible for free and/or reduced price meals.

The issues of privacy and confidentiality of personal data are complicated as well as sensitive. Therefore, prior to developing local disclosure policies, we recommend that determining agencies discuss the disclosure provisions with their legal counsel. At a minimum, determining agencies that decide to disclose information that identifies individuals must follow these guidelines. **These guidelines apply to eligibility information regardless of the manner in which the information is maintained including, but not limited to, print, tape, microfilm, microfiche, and electronic communication.**

I. What information may be disclosed permissibly without consent?

(The term “persons directly connected” in this section includes Federal, State and local program operators responsible for program administration or program compliance and their contractors.)

A. Disclosing names and eligibility status in accordance with the NSLA.

Determining agencies may disclose, without consent, participants' **names and eligibility status** (whether they are eligible for free meals or free milk or reduced price meals) to persons *directly* connected with the administration or enforcement of the following programs:

1. Federal education programs, such as Title I and the National Assessment of Educational Progress.
2. State health or State education programs provided the programs are administered by a State agency or a local education agency.

Representatives of State or local education agencies evaluating the results and compliance with student assessment programs would be covered only to the extent that the assessment program was established at the State, not local, level.

3. Federal, State, or local means-tested nutrition programs with eligibility standards comparable to the National School Lunch Program (i.e., food assistance programs to households with income at or below 185 percent of the Federal poverty level, such as the Food Stamp Program or a State or local nutrition program).

B. Disclosing all eligibility information in accordance with the NSLA. In addition to names and eligibility status, determining agencies may disclose, without consent, **all eligibility information** obtained through the free and reduced price meal or free milk eligibility process (including all information on the application or obtained through direct certification or verification) to the following:

1. Persons directly connected with the administration or enforcement of the programs authorized under the NSLA or Child Nutrition Act of 1966 (CNA) (42 U.S.C. 1771). "Persons" includes inspectors from the Department of Commerce and Regulation and Department of Education and Cultural Affairs in the course of a review. The "programs authorized" includes the National School Lunch Program, School Breakfast Program, Special Milk Program, Child and Adult Care Food Program, Summer Food Service Program, and the Special Supplemental Nutrition Program for Women, Infants and Children (WIC). This means that program eligibility information collected for any one of the Child Nutrition Programs may be shared with another Child Nutrition Program, even if the programs are sponsored by different entities. For example, a public school may disclose information from children's free and reduced price school meal applications, without parental consent, to a Summer Food Service Program administered by Parks and Recreation.
2. The Comptroller General of the United States for purposes of audit and examination.

3. Federal, State or local law enforcement officials investigating alleged violations of any of the programs under the NSLA and CNA or investigating violations of any of the programs authorized to have access to names and eligibility status discussed in paragraph A above.

C. Recommendation for notifying households of potential disclosures. While not a requirement, we recommend that determining agencies inform households if they plan to disclose or use eligibility information outside the originating program. The notice of potential disclosure may be in the notice/letter to households that accompanies the free and reduced price meal or free milk application, on the application, or, for participants directly certified, in the document informing households of the participants' eligibility through direct certification. The notification should state that the participants' names, eligibility status and other information provided on the application or obtained through direct certification or verification may be disclosed to certain other Federal, State or local agencies as authorized by the NSLA. A list of the specific programs is not necessary. The parent letter accompanying the application for free and reduced price meals has this statement:

Will information on my form be kept confidential? We will use the information on your form to decide if your child should get free or reduced price meals. We may inform officials associated with other child nutrition, health and education programs of the information on your form to determine benefits for those programs or for funding and/or evaluation purposes.

II. What types of disclosures require consent?

A. Disclosing eligibility information to individuals and programs not authorized under the NSLA. The disclosure of participants' names and *any* eligibility information that identifies them individually to programs or individuals not specifically authorized by the NSLA requires written consent. Some programs that may request names and eligibility information for which consent prior to disclosure is required include:

1. Federal health programs, such as Medicaid or the Children's Health Insurance Program (CHIP);
2. Local health and local education programs and other local level activities. For example, the disclosure of children's eligibility for free and reduced price meals to determine children's eligibility for free text books or reduced fees for summer school requires consent when these are local initiatives and not State programs; and
3. Any other Federal, State or local program or individual not included in the statute.

Child and Adult Nutrition strongly encourages the local agencies to consider and set policy in advance of requests, such as lists will only be provided to those who are providing a benefit to the child. Agencies should also determine whether there would be a charge for labor to handle the requests. There is a cost in time and materials, and possibly postage, to handle the requests for waiver and track each request individually. It is possible that a request for disclosure may list more than one program. Parent/Guardians could say "yes" to disclosure for one program and "no" to another program.

B. Disclosing information that goes beyond that allowed under the NSLA. The disclosure of information other than names and eligibility status to the programs authorized only to receive participants' names and eligibility status also requires written consent. For example, determining agencies may disclose names and eligibility status to a Federal education program, but if the program requests family size, determining agencies must obtain consent prior to disclosure.

III. What are the requirements for consent statements?

The consent statement must be in writing. It may be obtained at the time of application, such as on a multi-use application, or at a later time.

The consent statement must conform to the following requirements:

1. The consent statement must identify the information that will be shared and how the information will be used.
2. The consent statement must be signed and dated. In the case of a child participant, the consent statement must be signed by the parent or guardian of the applicant household, even though the application for free and reduced price meals or free milk may be signed by any adult household member. For adult participants in the CACFP, the adult participant must sign the consent statement unless a guardian has been appointed.
3. The consent statement must state that failing to sign the consent statement will not affect eligibility or participation for the program and that the information will not be shared by the receiving program with any other entity or program.
4. The parent/guardian/adult must be able to limit consent to only those programs with which he or she wishes to share information. For example, the consent statement could use a check-off system under which the applicant would check or initial a box to indicate that he or she wants to have information disclosed to determine eligibility for benefits from a particular program.

IV. What are the requirements for disclosure of social security numbers?

When disclosing or using the social security number provided by the household on the application for any purpose other than the program for which the number was collected, the determining agency must modify the notice required by the Privacy Act of 1974 concerning the potential uses of the social security number. The notice must inform households of the additional intended uses of the number.

V. Are agreements required?

Prior to disclosing or using any information for purposes other than the program for which the information was obtained, Child and Adult Nutrition Services requires that the determining agency enter into a written agreement with the entity requesting the information. The prototype provides for signature by both the determining agency and receiving entity, identifies the entity and individual receiving the information. It also asks how the information to be disclosed and how it will be used, describes how the information will be protected from unauthorized uses and disclosures, and specifies the penalties for unauthorized disclosure.

At a minimum, the receiving entity must be informed in writing that eligibility information may only be used for the purpose for which the disclosure was made, that further use or disclosure to other parties is prohibited and that a violation of this provision may result in a fine of not more than \$1000 or imprisonment of not more than 1 year, or both.

An agreement is not needed for Federal, State or local agencies evaluating or reviewing Child Nutrition Program operations. Similarly, an agreement is not necessary for disclosures to the Comptroller General. These activities are part of routine Child Nutrition Program operations and enforcement.

VI. Are there any penalties for improper disclosure?

The NSLA establishes a fine of not more than \$1000 or imprisonment of not more than 1 year, or both, for publishing, divulging, disclosing, or making known in any manner or extent not authorized by Federal law, any eligibility information. This includes the disclosure of eligibility information by one entity authorized under the NSLA to receive the information to any other entity, even if that entity would otherwise be authorized to receive the information directly from the determining agency.

These guidelines are subject to change pending issuance of a final rule.

WAIVER OF CONFIDENTIALITY AND MEMORANDUM OF UNDERSTANDING

The attached Waiver of Confidentiality and Memoranda of Understanding must be used if the Local Agency is intending to share information on category of eligibility by name with individuals and/or programs not authorized under the National School Lunch Act. It is not required for eligible personnel and/or programs authorized under the National School Lunch Act. If the Local Agency is not intending to share any information beyond aggregate numbers of students in a class or school compared to the number of students eligible for free and reduced price meals in that same class or school, it is not necessary to use the attached information.

The Memorandum of Understanding between the Local Agency Agencies Receiving Information Authorized under the National School Lunch Act is to be signed and kept on file at the Local Agency. This is intended to impress upon that person the confidential nature of this information as well as penalties for misuse of the information.

The Waiver of Confidentiality is to be provided to households with the application for free and reduced price meals. It is to be used to seek permission from parents to disclose any information beyond that allowed in the National School Lunch Act and/or for any programs not allowed in the National School Lunch Act. It may be used to seek permission from parents to disclose information allowed in the National School Lunch Act if the Agency so desires. If it is used in this second instance, revisions to the Waiver are needed.

The Memorandum of Understanding between the Local Agency and CANS must be completed, signed by the authorized representative, and returned to Child and Adult Nutrition Services (CANS) with a cover letter requesting authorization to release any information beyond that allowed in the National School Lunch Act and/or for any programs not allowed in the National School Lunch Act.

The Memorandum of Understanding between the Local Agency and Agencies Receiving Information Beyond that Authorized under the National School Lunch Act must be signed and kept on file at the Local Agency after the Local Agency has been given permission to release information beyond that authorized in the National School Lunch Act. This is intended to impress upon that person the confidential nature of this information as well as penalties for misuse of the information. The Waiver of Confidentiality is to be provided to households with the application for free and reduced price meals.

PROTOTYPE WAIVER OF CONFIDENTIALITY

The local agency should work with Child and Adult Nutrition Services to be sure the information requested on the waiver provided to the parents is in accordance with the National School Lunch Act. The information can be obtained on disk or via electronic format for reduced time in preparation of the document. Provide a draft of the waiver to the CANS office for review.

The information that you gave on the application for free and reduced price meals or letter of direct certification was used to determine or prove your child's eligibility for free or reduced price meals. Eligibility for free or reduced price meals may qualify students, centers, or schools for other programs or benefits.

You may have turned in an application for free or reduced price meals, a letter from Department of Social Services, or an Interagency Notice of Action to show you are eligible for free meals. If you did, you may complete and return this Waiver of Confidentiality if you are willing to have your family's eligibility shared with certain programs as listed. The programs will only be told that your family is eligible for free or reduced-price meals. The program the information is given to cannot tell any other group about family or child eligibility. Some programs need additional information besides the children's name and eligibility status. If the program needs more information, that is specified in the spaces below. You choose whether or not you want to have this information about your children/family shared with anyone besides the meal programs.

If your family's eligibility is based on income, the family income and social security number will not be shared outside of other child nutrition programs unless it is described below. Only the eligibility status (free, reduced, paid) will be shared with other types of programs.

You do not have to complete this part to get free and reduced price meals.

Check any or all of the items below to tell us if you will let your children's free or reduced meal category to be used as described. You are not required to complete and return this page if you do not want to. If you do not return this page, the information will not be shared.

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CHILDREN'S HEALTH INSURANCE PROGRAM (CHIP)

The Children's Health Insurance Program helps provide insurance benefits for children under the age of 19 and if their income meets standards similar to the eligibility for school meals. The CHIP in our county is interested in finding out which families might be eligible for the program.

☐ YES ☐ NO School officials may share my child's name and meal eligibility with the Children's Health Insurance Program (CHIP).

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(List other program[s] and describe benefits the school/child may receive or why the program is requesting the information or what information you are requesting to release beyond that allowed under the National School Lunch Act. If more than one program is interested in the information, the parents must have the opportunity to indicate their desires separately for each program. If no other programs are requesting information, this section may be deleted.)

☐ YES ☐ NO Local Agency officials may share my child's name and meal eligibility with the _____ program. OR Local agency officials may share my child's name, meal eligibility status and _____ with the _____ program.

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I certify that I am the parent or legal guardian of the children listed on our household's application for free and reduced price meals or letter of direct certification and that their meal eligibility and/or additional information may be shared with the program(s) as checked above. I understand that signing this waiver is not a condition for receiving free or reduced price meals for the child nutrition programs.

Signature of Parent or Legal Guardian

Date

In the operation of Child Feeding Programs, no person will be discriminated against because of race, sex, color, national origin, age, or disability. If you believe you have been discriminated against, write immediately to the Secretary of Agriculture, Washington, DC 20250.

MEMORANDUM OF UNDERSTANDING
(Between the Local Agency and the Agencies Receiving Information
Authorized under the National School Lunch Act)

As a representative of the _____ program receiving information regarding families' eligibility for free and reduced price meals, I understand that:

1. This information is confidential information and that this information cannot be shared with anyone else or any other program.
2. This information may only be used to determine the child or family's eligibility for the benefits for the program listed above or for statistical analysis for the program listed above.
3. The information cannot be posted or publicly displayed in any manner.
4. I am only entitled to receive information regarding the family's eligibility for free or reduced price meals. I am not entitled to receive information regarding their specific income, family size, social security number, or eligibility for other programs such as Food Stamps, TANF, or FDPIR.
5. Misuse or sharing of this information violates the family's right to privacy and may subject me to penalties or suits under the National School Lunch Act including penalties of a fine of not more than \$1000 or imprisonment of not more than one year, or both.

With this understanding, I certify that I will keep confidential the information provided to me for use only in my program.

(Signature and Printed Name of Person Receiving Information)

(Date)

(Signature and Printed Name of Person Providing Information)

(Date)

MEMORANDUM OF UNDERSTANDING
(Between the Local Agency and Child and Adult Nutrition Services)

(This Memorandum is only needed for information to be disclosed that goes beyond that allowed under the National School Lunch Act as described in part II (B) of the memo.)

The _____ Local Agency is requesting a waiver to disclose additional information for the following program:

The other information to be disclosed includes:

The reason the program needs that information is:

The program requesting the information will protect the information from unauthorized use and disclosure by:

As the authorized representative, I understand that:

1. Information may be shared only for children whose parent or legal guardian has turned in a signed waiver of confidentiality;
2. Information may only be shared with the program(s) the parent or legal guardian has indicated on the signed waiver of confidentiality;
3. Information that is shared must be limited to the program(s) listed above;
4. It is the parent or legal guardian's choice whether or not to turn in a waiver of confidentiality. Signing the waiver may not be required and may not be used as a condition to determine meal eligibility;
5. Child and Adult Nutrition Services must approve changes to the prototype, other than listing the programs the listing is used for.

Signature of Authorized Representative

Date

Local Agency

MEMORANDUM OF UNDERSTANDING
(Between the Local Agency and the Agencies Receiving Information
Beyond that Authorized under the National School Lunch Act)

As a representative of the _____ program receiving information from the families' applications for free and reduced price meals beyond that Authorized under the National School Lunch Act from families which have waived their right to confidentiality as so that the information can be shared with my program, the following information is provided:

The information beyond child's name and eligibility status to be disclosed to me includes:

The information will be used to:

I will protect the information from unauthorized use and disclosure by:

As the authorized representative, I understand that:

1. This information is confidential information and that this information cannot be shared with anyone else or any other program.
2. This information may only be used to determine the child or family's eligibility for the benefits for the program listed above or for statistical analysis for the program listed above.
3. Some families may not have waived their right to confidentiality and their names are not included in the information given to me, and further, that I may not put any pressure on the families to sign the Waiver of Confidentiality.
4. The information cannot be posted or publicly displayed in any manner.
5. I am only entitled to receive information listed above in addition to the families' eligibility for free or reduced price meals.
6. Misuse or sharing of this information violates the family's right to privacy and may subject me to penalties or suits under the National School Lunch Act including penalties of a fine of not more than \$1000 or imprisonment of not more than one year, or both.

With this understanding, I certify that I will keep confidential the information, provided to me for use only in my program and will use it only in accordance with that described above.

(Signature and Printed Name of Person Receiving Information) (Date)

(Signature and Printed Name of Person Providing Information) (Date)